

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

FS MEDICAL SUPPLIES, LLC,

Plaintiff,

v.

TANNERGAP, INC. *et al.*,

Defendants.

Civil Action Nos.

3:21-CV-00501-UJ1-WCM

3:23-CV-00598-UJ1-WCM

3:25-CV-00102-UJ1-WCM

**MOTION FOR ASSIGNMENT OF DISTRICT JUDGE,
HEARING ON MOTIONS, AND
SETTING OF RULE 16 STATUS CONFERENCE**

Plaintiff FS Medical Supplies, LLC (“FSMS”) respectfully requests the assignment of a district judge, a hearing on pending motions, and the setting of a status conference under Rule 16.

This is a serious case, involving high stakes. FSMS’s actual damages for breach of contract, plus interest and attorneys’ fees, exceed \$600 million. This case has been pending in this Court for almost four years. Discovery has been substantially completed, but there is no trial date set, and the case has been without a District Judge since Judge Conrad retired in February 2025.

Since February 2025, when jurisdictional questions arose, the case has been on hold. The jurisdictional motions are fully briefed. They present a pure *forum* issue: If the Court decides it has jurisdiction—as it should—the case will soon be trial ready. If the Court lacks jurisdiction, FSMS will simply refile its case in Mecklenburg County. But until there is a dispositive ruling on the subject-matter jurisdiction motions, the case cannot move forward in *any* forum—and a dispositive ruling will require a decision by a District Judge.

FSMS recognizes that this District is short-staffed. The Chief Judge has options for assigning a judge to this case or seeking assistance from a judge outside the district. *See* 28 U.S.C. §§

137(a), 291, 292, 295. FSMS respectfully requests assistance in that regard.

CONFERRAL

FSMS conferred with counsel for Defendants in advance of filing this motion. Defendants stated that they were unprepared to take a position without reviewing the motion first.

CONCLUSION

FSMS respectfully requests the assignment of a District Judge, a hearing on the pending motions, and a status conference to get this case back on track for resolution on the merits.

This the 17th day of July, 2025.

/s/ Kent A. Yalowitz
Kent A. Yalowitz (admitted *pro hac vice*)
N.Y. State Bar No. 2188944
Carmela T. Romeo (admitted *pro hac vice*)
N.Y. State Bar No. 5058151
ARNOLD & PORTER
KAYE SCHOLER LLP
250 W 55th Street
New York, NY 10019
212-836-8000
kent.yalowitz@arnoldporter.com
carmela.romeo@arnoldporter.com

– and –

Eliseo R. Puig (admitted *pro hac vice*)
Colorado State Bar No. 49022
ARNOLD & PORTER
KAYE SCHOLER LLP
1144 Fifteenth Street, Suite 3100
Denver, CO 80202
303-863-1000
eliseo.puig@arnoldporter.com

/s/ Lex M. Erwin
Lex M. Erwin
N.C. State Bar No. 34619
David A. Luzum
N.C. State Bar No. 41398
Kevin Y. Zhao
N.C. State Bar No. 53680
MAYNARD NEXSEN PC
227 W. Trade Street, Suite 2300
Charlotte, NC 28202
Telephone: (704) 339-0304
Facsimile: (704) 338-5377
lerwin@maynardnexsen.com
dluzum@maynardnexsen.com
kzhao@maynardnexsen.com

*Counsel for Plaintiff FS Medical Supplies,
LLC*